150 U.S. 420

150-420

RECORD, CASE NO. 14011.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM NO. ~~383~~. 90

ANTHONY F. SEEBERGER, COLLECTOR FOR THE PORT AND DISTRICT OF CHICAGO, PLAINTIFF IN ERROR.

vs.

FRANCIS A. HARDY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED APRIL 9, 1890.

RECORD, CASE NO. 14011.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM NO. 333.

ANTHONY F. SEEBERGER, COLLECTOR FOR THE PORT AND DISTRICT OF CHICAGO, PLAINTIFF IN ERROR,

vs.

FRANCIS A. HARDY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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1 Pleas in the circuit court of the United States of America for the northern district of Illinois, held at the United States court rooms in the City of Chicago in the district aforesaid before the Hon. Henry W. Blodgett, judge of the district court of the United States for said northern district of Illinois on Wednesday the thirteenth day of February, 1889, in the December term of said court in the year of our Lord, one thousand eight hundred and eighty-eight, and of our independence the one hundred and thirteenth year. Wm. H. Bradley, clerk.

FRANCIS A. HARDY,
vs.
ANTHONY F. SEEBERGER, COLLECTOR FOR the port and district of Chicago. } Assumpsit.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the tenth day of December, 1886, came the plaintiff by his attorney and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois at Chicago, in said district, his præcipe for a writ of summons and also at the same time filed his bond for costs in said above entitled cause, which said præcipe and bond are in the words and figures following, to wit:

2 *Præcipe.*

United States circuit court, northern district of Illinois.

FRANCIS A. HARDY, PLAINTIFF,
vs.
ANTHONY F. SEEBERGER, COLLECTOR, defendant. } Demand $300.00.

The clerk of said court will issue a summons in the above entitled cause in a plea of trespass on the case on promises to the damage of the plaintiff in in the sum of three hundred (300) dollars and direct the same to the marshal to execute and make it returnable to the December term of said court A. D. 1886.

JESSE A. BALDWIN,
Plaintiff's Attorney.

December 10th, 1886.

(Endorsed:) Filed this 10th day of Dec., A. D. 1886. Wm. H. Bradley, clerk.

Bond for costs.

UNITED STATES OF AMERICA,
Northern district of Illinois, *ss:*

Circuit court, December term, A. D. 1886.

FRANCIS A. HARDY,
vs.
ANTHONY F. SEEBERGER, COLR. } In assumpsit.

3 I enter myself security for costs in this cause and promise to pay all costs which may accrue to the opposite party in this action or

to any of the officers of this court; and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by him, I hereby agree and stipulate that execution may issue against my property for any costs taxed against him.

Dated this 10th day of December, A. D. 1886.

JESSE A. BALDWIN.

(Endorsed:) Filed Dec. 10, A. D. 1886. Wm. H. Bradley, clerk.

4 On the same day, to wit: On the tenth day of December, 1886, came the plaintiff by his attorney and filed in said clerk's office his declaration in said entitled cause, which said declaration is in the words and figures following, to wit:

Declaration.

In the circuit court of the United States of America, for the northern district of Illinois, of the December term in the year 1886.

NORTHERN DISTRICT OF ILLINOIS, *Set.:*

Francis A. Hardy, plaintiff, by Jesse A. Baldwin, his attorney, complains of Anthony F. Seeberger, collector, defendant, of a plea of trespass on the case upon promises:

For that whereas the said defendant on the 30th day of August, in the year 1886, at Chicago, in the northern district of Illinois, being the collector of customs of the United States of America, for the port and district of Chicago, did erroneously and illegally exact of and from the said plaintiff a large sum of money, to wit, the sum of fifty-nine (59) dollars and eighty (80) cents as duties payable to the said United States upon and in respect of certain merchandise then lately before imported for the said plaintiff in the said United States, to wit: One case of pearl opera glasses, ascertainment and liquidation of the duties to be paid to the said United States upon the imported merchandise aforesaid, having been theretofore made by the proper officers of the customs of the said United States in that behalf; and the said plaintiff then and there, under protest
5 and in order to obtain possession of the said merchandise, paid to the said defendant, as such collector, the sum of money above mentioned, although requirement of such payment was not then authorized by law, and the said amount so exacted and paid was in excess of the duties then by law payable upon the said merchandise; and thereupon the said plaintiff, within ten days after the said ascertainment and liquidation of duties as aforesaid, to wit, on the 30th day of August, in the year 1886, being dissatisfied with the said decision of the said defendant, as such collector, in that behalf, there gave to him notice in writing, setting forth therein distinctly and specifically the grounds of the objections of the said plaintiff to the said decision; and thereupon the said plaintiff afterwards and within 30 days after the said date of the said ascertainment and liquidation, to wit, on the 30th day of August, in the year 1886, there duly made appeal from the said decision to the Secretary of the Treasury of the said United States; and afterwards and within 90 days before the commencement of this suit, to wit, on the 9th day of October, in the year 1886, the said Secretary of the Treasury decided the said appeal adversely to the

said plaintiff; by means of which premises and by force of the statute in such case made and provided, the said defendant, collector as aforesaid, afterwards, to wit, on the 1st day of December, in the year 1886, within the city and district aforesaid, became liable to pay the said plain-
6 tiff the said sum of fifty-nine (59) dollars and eighty (80) cents; and being so liable, he, the said defendant, in consideration thereof, then and there undertook and promised the said plaintiff to pay him that sum of money when he, the said defendant, should be thereto requested.

And for that whereas also the said defendant on the 30th day of Oct. in the year 1886, at Chicago, in the northern district of Illinois, being the collector of customs of the United States of America, for the port and district of Chicago, did erroneously and illegally exact from the said plaintiff a large sum of money, to wit: the sum of one hundred & twelve (112) dollars and eighty (80) cents, as duties payable to the said United States, upon and in respect of certain merchandise then lately before imported for the said plaintiff in the said United States, to wit: one case pearl opera glasses; ascertainment and liquidation of the duties to be paid to the said United States upon the imported merchandise aforesaid having been theretofore made by the proper officers of the customs of the said United States in that behalf; and the said plaintiff then and there, under protest and in order to obtain possession of the said merchandise paid to the said defendant, as such collector, the sum of money above mentioned, although requirement of such payment was not then authorized by law, and the said amount so exacted and paid was in excess of the duties then by law payable upon the said
7 merchandise; and thereupon the said plaintiff within 10 days after the said ascertainment and liquidation of duties aforesaid to wit: on the 8th day of Oct. in the year 1886, being dissatisfied with the said decision of the said defendant, as such collector, in that behalf, there gave to him notice in writing, setting forth therein distinctly and specifically the grounds of the objections of the said plaintiff to the said decision, and thereupon the said plaintiff afterwards, and within 30 days after the said date of the said ascertainment and liquidation, to wit, on the 8th day of October, in the year 1886, there duly made appeal from the said decision to the Secretary of the Treasury of the said United States, and afterwards and within 90 days before the commencement of this suit, to wit, on the 2d day of Nov. in the year 1886, the said Secretary of the Treasury decided the appeal adversely to the said plaintiff; by means of which premises, and by force of the statute in such case made and provided, the said defendant collector as aforesaid, afterwards to wit, on the 1st day of December in the year 1886, within the city and district aforesaid became liable to pay to the said plaintiff the said sum of one hundred and twelve (112) dollars and eighty (80) cents; and being so liable, he the said defendant, in consideration thereof, then and there undertook and promised the said plaintiff to pay him that sum of money when he the said defendant, should be thereto requested.

And for that whereas also the said defendant on the 1st day of
8 December, in the year 1886, at Chicago, aforesaid, in the district aforesaid, was indebted to the said plaintiff in the sum of two hundred (200) dollars for money before that time lent by the said plaintiff to the said defendant at his request, and in the like sum for money before that time received by the said defendant for the use of the said plaintiff; and

in the like sum for interest on divers sums of money before that time foreborne by the said plaintiff to the said defendant, at his request, for divers spaces of time before then elapsed, and being so indebted, the defendant in consideration thereof, then and there promised to pay to the said plaintiff, on request, the several sums of money so due to him as aforesaid.

Yet the said defendant though requested, has not paid to the said plaintiff the several sums of money above specified or any or either of them or any part thereof, but refuses so to do, to the damage of the said plaintiff of three hundred (300) dollars and therefore he brings his suit, etc.

JESSE A. BALDWIN,
Atty. for Plaintiff.

(Endorsed:) Filed Dec. 10, 1886, Wm. H. Bradley, clerk.

9 On the same day, to wit, on the tenth day December, 1886, there issued out of said clerk's office a writ of summons in said entitled cause, which said writ, together with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

Summons.

Circuit court of the United States of America, northern district of Illinois.

THE UNITED STATES OF AMERICA, *ss:*

To the marshal of the northern district of Illinois, greeting: We command you to summon Anthony F. Seeberger, collector, &c., if found in your district, to be and appear our judges of our circuit court of the United States for the northern district of Illinois, on the first day of the next term thereof, to be holden at Chicago, in the district aforesaid, on the third Monday of December next, to answer unto Francis A. Hardy of a plea of trespass on the case upon promises to his damage, as is alleged, of three hundred dollars, and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Chicago, aforesaid, this 10th day of December, in the year of our Lord one thousand eight hundred and eighty-six, and of our Independence the 111th year.

[SEAL.] WM. H. BRADLEY,
Clerk.

10 *Marshal's return.*

I have served the within writ by reading the same to and within the presence and hearing of Anthony F. Seeberger, collector, &c., therein named, on the 10th day of December, 1886.

F. H. MARSH,
U. S. Marshal.
By IRA BARCHARD,
Deputy.

(Endorsed:) Filed Dec. 10, A. D. 1886. Wm. H. Bradley, clerk.

11 Afterward, to wit, on the eleventh day of December, 1886, came the defendant, by his attorney, and filed in said clerk's office his plea in said entitled cause, which said plea is in the words and figures following, to wit:

Plea.

In the circuit court of the United States of America for the northern district of Illinois, October term, 1886.

ANTHONY F. SEEBERGER, COLLECTOR, &c.
ats
FRANCIS A. HARDY. } Assumpsit.

And the said Anthony F. Seeberger, defendant, by W. G. Ewing (United States attorney for this district), his attorney, comes and defends, etc., when, etc., and says that he did not undertake or promise in manner and form as the said plaintiff has above thereof complained against him; and of this the said defendant puts himself upon the country, etc.

W. G. EWING,
U. S. Attorney for Defendant.

(Endorsed:) Filed Dec. 11, 1886. Wm. H. Bradley, clerk.

12 Afterward, to wit, on the twenty-eighth day of January, 1889, in the December term of said court, 1888, in the record of the proceedings thereof in said entitled cause before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

FRANCIS A. HARDY
vs.
ANTHONY F. SEEBERGER, COLLECTOR, &c. } Assumpsit.

Now come the parties by their attorneys, and now comes on to be heard the motion of the defendant to suppress the deposition of Baille Le Maire filed herein, and after hearing the arguments of the counsel, the court overrules said motion.

13 Afterward, to wit, on the twenty-ninth day of January, 1889, in the December term of said court, 1888, in the record of the proceedings thereof in said entitled cause before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

FRANCIS A. HARDY
vs.
ANTHONY F. SEEBERGER, COLLECTOR, &c. } Assumpsit.

Now come the parties by their attorneys, and upon issue joined herein, thereupon comes a jury of good and lawful men, to wit: H. S. Stoddard, M. T. Trowbridge, B. H. Nichols, D. Ryan, Pike Dernier, E. S. Davis, E. M. Donohue, J. S. Bartlett, J. S. Myers, O. S. Stangeland, S. D. Baldwin, and William Hall, who were all duly elected, tried, and sworn well and truly to try said issue, and after hearing the evidence and receiving the instructions of the court the jury returned the following verdict, to wit: We, the jury, find the issue for the plaintiff and assess his damages at one hundred and forty-six dollars and ninety-five cents.

14 On the same day, to wit, on the twenty-ninth day of January, 1889, there was filed in said clerk's office a stipulation in said entitled cause, which said stipulation is in the words and figures following, to wit:

In the U. S. circuit court, northern district of Illinois, northern division.

FRANCIS A. HARDY
vs.
ANTHONY F. SEEBERGER, COLL'R. } Gen. No. 20397.

It is hereby stipulated that the importations, protests, and appeals herein were duly made, decisions rendered, and the suit properly brought, and proper bill of particulars duly served.

JESSE A. BALDWIN,
Attorney for Plaintiff.
W. G. EWING,
Attorney for Defendant.

(Endorsed:) Filed Jan'y 29, 1889. Wm. H. Bradley, clerk.

15 Afterward, to wit, on the thirteenth day of February, 1889, in the December term of said court, 1888, in the record of the proceedings thereof in said entitled cause before Hon. Henry W. Blodgett, district judge, is the following entry to wit:

Judgment.

FRANCIS A. HARDY
vs.
ANTHONY F. SEEBERGER, COLLECTOR, &C. } Assumpsit.

Now come the parties by their attorneys, and on motion of the plaintiff's attorney the court awards judgment herein. It is thereupon considered and adjudged by the court that said plaintiff do have and recover of said defendant the said sum of one hundred and forty-six dollars and ninety-five cents, his damages with interest thereon from time of payment together with his costs, herein amounting to sixty-two dollars and sixty cents.

And the court finds that there was probable cause for the acts done herein by said defendant.

16 On the hearing of said cause the following exceptions were taken and were allowed by the court and made of record, which said exceptions are in the words and figures following, to wit:

In the circuit court of the United States for the northern district of Illinois.

FRANCIS A. HARDY
vs.
ANTHONY F. SEEBERGER. } Asst. No. 20936.

Be it remembered that upon the trial of this cause the plaintiff, to maintain the issue upon his side, testified as follows:

My name is Francis A. Hardy. I am plaintiff in this cause. I have been for twelve years last past engaged in the importation and sale of

optical goods. I am acquainted with the business of the manufacture of opera glasses and with the cost of the same in Paris, from whence these glasses are imported, and I know their values as well as the values of their component materials.

The opera glasses in question are composed of—

1st. A metal frame; 2d, glass lenses; 3d, a covering for the body of the frame, which may consist of either leather, enamel, silver, gold, or shell; and 4th, a leather case or box in which to carry the complete opera glass.

All the above four component parts may be made by one manufacturer, or each of the said component parts may be made by different
17 manufacturers, and be put together and sold by one of them or by another person. The cheapest form of opera glass usually sold is that in which the cover for the body of the frame is made of leather. When shell coverings are used for the same grade of opera glasses the value of the glasses is enhanced on account of the said shell covering by about one hundred per cent. Some of the glasses involved in this suit (of which a large portion of the frame is covered with shell) are enhanced in value thereby by about one hundred and fifty per cent; the said increase in value on account of the pearl covering being greater than the combined values of the other three component parts, viz, the metal frame, the glass lenses, and the leather cases.

The relative values of the four component parts of the shell opera glasses are about as follows:

Shell, about forty-five to sixty per cent; metal, about twenty-five to thirty-three per cent; the glass lenses, about eight to ten per cent; the leather cases, about six to eight per cent. In all the opera glasses in question the value of the pearl exceeds that of all the other component materials.

In the above statement I have taken the market values of the opera glasses and of their different component parts as they are ready for sale, exportation, or use.

The shell-covered opera glasses described in the deposition of J. B. Baille Lemaire, taken before J. L. Rathbone, are the glasses involved in this suit.

18 The plaintiff also offered in evidence the following depositions, to wit, the depositions of Baille Lemaire and others.

Q. State your name, age, occupation, and place of residence.

A. My name is Jean Baptiste Baille Lemaire; I am 48 years of age and upwards; I am engaged in the manufacture of opera glasses, doing business under the firm name of Baille Lemaire, at No 22 & 26 rue Oberkampf, Paris, France.

Q. Please state how long you have been engaged in your present business.

A. I have been engaged in my present business as a manufacturer of opera glasses for the past five years.

Q. Please state whether or not you or the firm or company with which you are associated sold to Mess. Koch frères (commissioner agent of the plaintiff), for the plaintiff, pearl opera glasses or opera glasses covered with pearl, between the 8th day of January, 1886, and the 17th day of October, 1888.

A. I have sold to Messrs. Koch frères, for the plaintiff, pearl opera glasses or opera glasses covered with pearl between 8th day of January, 1886, and the 17th day of October, 1888.

Q. If to interrogatory three you say you did so sell, please state (if you knew) whether there were different grades and sizes of such glasses so sold; and, if there were, please state how the different grades and sizes were designated. Please also state the date or dates of such sales and the quantity and kind in each.

A. Yes, there were different grades and sizes so sold; the different grades and sizes were designated by the numbers 11, 13, 15, 17,
19 19, 21, 24, & 26. I annex hereto as part of my deposition and endorsed as Exhibit A, a statement showing the dates of such sales, but I have not indicated the quantity and kind in each, for the reason that it would occasion me the labor of making long copies from my books.

Q. Please state whether or not you know the value of the different materials composing the said glasses, and, if you do, please state fully the value of each of the said materials in each of the different grades and sizes (if there were different grades and sizes), respectively.

A. I attach hereto as a tabular statement and endorse as Exhibit B a table showing the values of each of the component materials used in the opera glasses sold by me to Messrs. Koch frères for the plaintiff between the dates of .

Q. Do you know of any other matter or thing of benefit or advantage to the plaintiff touching the matter in controversy in these causes in addition to what you have already stated?

Q. I do not know of any matter or thing of benefit to the plaintiff touching the matter in controversy other than I have already stated.

X-Q. Are you in any way engaged in the manufacture of opera glasses?

A. I am a manufacturer of opera glasses.

X-Q. Do you know the value of the materials respectively entering into the manufacture of the opera glasses about which you have above been interrogated?

A. I do know such values.

20 X-Q. If you shall say you are a manufacturer, then state in what condition the various materials are first received by you; whether the metal is in sheets or in bars; state its form and its value prior to being worked upon by you; also state the form and condition in which the pearl is received by you, and its value before being worked upon by you; state the same of the glass.

A. The condition in which the various materials are first received by me and the form and value of the same prior to being worked upon by me are as follows, viz: The metal (copper) is in the form of cast lingots or in sheets; the price during the past five years has varied from 100 to 220 francs per 100 kilograms. The pearl is in the original and natural form of mother-of-pearl shells; the price for the last five years has been from 8 to 2 francs per kilogram; transportation and maritime insurance are items forming the cost price of shell. The glass is in the rough just as it comes from the cast; the prices have not varied for a long time; they are for the ordinary glass, 25 francs per square meter; for flint glass, $3\frac{50}{100}$ francs per kilogram, and for crown glass 7 francs per kilogram.

X-Q. If you shall state that you are not a manufacturer, but simply a dealer, then state in what condition you receive the various parts or materials entering into the opera glasses, and the values of the materials respectively when you receive them.

A. I have already stated in my answer to the first cross-interrogatory that I am a manufacturer of opera glasses.

X-Q. State, if you know them, the respective values of the various materials entering into the manufacture of opera glasses you have spoken of at the time they are received by the opera glass manufacturer and before any work is put upon them by him.

21

A. I have already stated these respective values in my answer to the third interrogatory.

X-Q. If, in answer to any of the direct interrogatories put to you, you have given a statement of the values of the materials entering into the manufacture of said opera glasses, then please state whether such values are based upon such materials after they have been manufactured and nothing remains to be done with them but to place them in position and fasten them together to make the completed opera glasses, or whether the value so stated by you are the values of the original materials (metal or glass or shell) before they have been advanced by manufacture or before any labor in the way of finishing or shaping such materials has been done upon them.

A. The statement of values furnished by me in answer to the 5th direct interrogatory is predicated upon the following twofold basis: 1st, the average value of the original materials during a period of the last ten years or more; 2nd, the cost of manufacture necessary to transform these raw materials (copper in cast ingots or in sheets, shells in their natural state, glass as it comes from the cast) into opera glasses.

XQ. If you purchase in their completed state the opera glasses you have spoken of in your direct examination, then give the names and addresses of the persons from whom you so purchased; and if you manufactured said glasses, then give the names and addresses of the persons of whom you purchased the various materials entering into the manufacture of said opera glasses, and state the values of such raw materials respectively at the time of your receiving them.

22

A. The names and addresses of some of the dealers from whom I purchased the raw materials used in the manufacture of these opera glasses are as follows, viz: for metal, Société Générale des Météaux, rue Elzière, Paris, France, and Mr. Chauvel of Evroux (Dépt. de l'Eure), France; for pearl, Mr. Ochse, rue Greneta, Paris, France, Mr. Simonson, London, Mr. Harris, Amsterdam; for glass, Société Général' de S'Gorain (Dépt. de l'Aisne), France, and Mr. Rossette of Montreuil, near Paris, France.

BAILLE LEMAIRE.

23 Dates des factures de livraison's à Mr. Mr. Koch frères, 6, rue Martel.

5	Janvier	1886.	7	Janvier	1888.
12	"	"	25	"	"
21	"	"	26	"	"
11	Mars	"	22	Février	"
1	Avril	"	7	Mars	"
24	"	"	"	"	"
24	Juin	"	14	"	"
6	Juillet	"	15	"	"
11	Août	"	16	"	"

Dates des factures de livraison's à Mr. Mr. Koch frères, 6, rue Martel—Continued.

25 Août 1886.
1 8bre "
11 " "
" " "
25 " "
5 9bre "

8 Février 1887.
18 " "
2 Mars "
23 " "
6 Avril "
13 " "
" " "
29 " "
18 Juillet "
30 " "
13 Août "
1 7bre "
15 " "
8 8bre "
22 " "
3 9bre "
12 " "
15 " "

24 Mars 1886.
29 " "
27 Avril "
1 Mai "
11 " "
25 " "
1 Juin "
17 Juillet "
1 Août "
" " "
" " "
11 " "
18 " "
21 " "
24 " "
" " "
6 7bre "
7 " "
14 " "
29 " "
11 8bre "
16 " "

EXHIBIT A produced & identified by Baille-Lemaire and endorsed by him & by the commissioner on the day of his examination—Baille-Lemaire—J. L. Rathbone, consul general & commissioner.

(Endorsed:) Filed Dec. 4, 1888. Wm. H. Bradley, clerk.

24 Dates.	Nos. du tarif.	Désignations.	7	11	13	15	17	19	21	24	25
1 7bre, 1885	34	Cuivre	Brass	8.50	9.	9.25	10.25	.....	..	.....	.....
		Verres	Glass *	2.	2.25	2.75	3.50	.....	.....	.....	.....
		Etuis	Case *	1.50	1.50	1.75	1.75	.....	.....	.....	.....
	155	Cuivre	Shell *	*12.00	*12.75	*14.25	*15.50	.....	.....	.....	.....
		Verres	.....	.....	.....	.....	.....	.....	.....	.....	.....
		Nacre	.....	.....	.....	.....	.....	.....	.....	.....	.....
	185	Cuivre	.....	10.25	10.50	11.50	13.25	.....	..	.....	.....
		Nacre	.....	11.	12.25	13.25	16.50	.....	..	.....	.....
		Verres	.....	2.	2.25	2.75	3.50	.....	.....	.....	.....
		Etuis	.....	1.50	1.50	1.75	1.75	.....	.....	.....	.....
	182	Cuivre	.....	*24.75	*26.50	*28.25	*35.00	.....	.....	.....	.....
		Nacre	.....	.....	.....	.....	.....	.....	.....	.....	.....
		Verres	.....	.....	.....	.....	.....	.....	.....	.....	.....
		Etuis	.....	.....	.....	.....	.....	.....	.....	.....	.....
	" 12 verres	Cuivre	.....	.....	.....	14.00	.....	.....	.....	.....	.....
		Nacre	.....	.....	.....	17.75	.....	.....	.....	.....	.....
		Verres	.....	.....	.....	10.75	.....	.....	.....	.....	.....
		Etuis	.....	.....	.....	2.25	.....	.....	..	..	.....
	219	Cuivre	.....	.....	.....	.....	.....	.....	.....	.....	.....
		Nacre	.....	.....	.....	.....	.....	.....	.....	.....	.....
		Verres	.....	.....	.....	.....	.....	.....	.....	.....	.....
		Etuis	.....	.....	.....	.....	.....	.....	.....	.....	.....
	703	Cuivre	.....	.....	.....	.....	.....	.....	.....	.....	.....
		Nacre	.....	.....	.....	.....	.....	.....	.....	.....	.....
		Verres	.....	.....	.....	.....	.....	.....	.....	.....	.....
		Etuis	.....	.....	.....	.....	.....	.....	.....	.....	.....
	239	Cuivre	.....	.....	.....	14.50	.....	.....	.....	.....	.....
		Nacre	.....	.....	.....	15.50	.....	.....	.....	.....	.....
		Verres	.....	.....	.....	2.75	.....	.....	.....	.....	.....
		Etuis	.....	.....	.....	2.25	.....	.....	.....	.....	.....
	231	Cuivre	.....	.....	.....	.....	.....	.....	.....	.....	.....
		Nacre	.....	.....	.....	.....	.....	.....	.....	.....	.....
		Verres	.....	.....	.....	.....	.....	.....	.....	.....	.....
		Etuis	.....	.....	.....	.....	.....	.....	.....	.....	.....
	188	Cuivre	.....	.....	.....	.....	.....	.....	.....	.....	.....
		Nacre	.....	.....	.....	.....	.....	.....	.....	.....	.....
		Verres	.....	.....	.....	.....	.....	.....	.....	.....	.....
		Etuis	.....	.....	.....	.....	.....	.....	.....	.....	.....
1 8bre, 1885	34	Cuivre	.....	.....	.....	.....	.....	.....	.....	.....	.....
		Verres	.....	.....	.....	.....	.....	.....	.....	.....	.....
		Etuis	.....	.....	.....	.....	.....	.....	.....	.....	.....

* In lead pencil in original.

Dates.	Nos. du tarif.	Désignations.	7	11	13	15	17	19	21	24	25
	155	Cuivre			10.50	11.50					
		Nacre			12.25	12.25					
		Verres			2.25	2.75					
		Etuis			1.50	1.75					
	185	Cuivre									
		Nacre									
		Verres									
	182	Cuivre			12.75	14.00					
		Nacre			16.75	17.75					
		Verres			2.25	2.75					
		Etuis			2.00	2.25					
25											
Suite 2 me. 21 août 1886.	155	Cuivre		10.25	10.50	11.50	13.25				
		Nacre		11.00	12.25	13.25	16.				
		Verres		2.	2.25	2.75	3.50				
		Etuis		1.50	1.50	1.75	1.75				
	185	Cuivre									
		Nacre									
		Verres									
	182	Cuivre									
		Nacre									
		Verres									
		Etuis									
	156	Cuivre			10.50	11.50	13.25				
		Nacre			16.75	17.75	20.50				
		Verres			2.25	2.75	3.50				
		Etuis			1.50	1.75	1.75				
	219	Cuivre									
		Nacre									
		Verres									
		Etuis									
	162	Cuivre									
		Nacre									
		Verres									
		Etuis									
	239	Cuivre									
		Nacre									
		Verres									
		Etuis									
	244	Cuivre									
		Nacre									
		Verres									
		Etuis									
	188	Cuivre			6.25	7.50					
		Nacre			12.25	13.25					
		Verres			2.25	2.75					
		Etuis			1.50	1.75					
	703	Cuivre									
		Nacre									
		Verres									
		Etuis									
	711	Cuivre									
		Nacre									
		Verres									
		Etuis									
	881. 12 verres	Cuivre									
		Nacre									
		Verres									
		Etuis									
	34 do.	Cuivre					10.25				
		Verres					12.50				
		Etuis					1.75				
	20.6	Cuivre									
		Verres									
		Etuis									
26											
Suite. 18bre 1885.	185 12 verres	Cuivre									
		Nacre									
		Verres									
		Etuis									
	182 do	Cuivre				17.					
		Nacre				17.75					
		Verres				10.75					
		Etuis				2.25					
	219	Cuivre									
		Nacre									
		Verres									
		Etuis									
	" 12 verres	Cuivre									
		Nacre									
		Verres									
		Etuis									

Dates.	Nos. du tarif.	Désignations.	7	11	13	15	17	19	21	24	25
	185 12 verres	Cuivre					13. 25				
		Nacre					16. 50				
		Verres					12. 50				
		Etuis					1. 75				
13 8bre 1885	34	Cuivre									
		Verres									
		Etuis									
5 Février 1886	1, 398	Cuivre									
		Verres									
		Etuis									
	" 12 verres	Cuivre									
		Verres									
		Etuis									
23 Février 1886	1, 398	Cuivre					16. 25	17. 75			
		Verres					3. 50	4. 25			
		Etuis					4. 50	4. 50			
	" 12 verres	Cuivre									
		Verres									
		Etuis									
21 Mai 1886	1, 398	Cuivre									
		Verres									
		Etuis									
2 Juin 1886	1, 398	Cuivre									
		Verres									
		Etuis									
21 Août 1886	1, 080	Cuivre									
		Verres									
		Etuis									
21 Août 1886	34	Cuivre			9.	9. 75	10. 25				
		Verres			2. 25	2. 75	3. 50				
		Etuis			1. 50	1. 75	1. 75				
	1, 200	Cuivre									
		Verres									
		Etuis									
27											
12 7bre 1886	1080	Cuivre									
		Verres									
		Etuis									
30 7 bre 1886	34	Cuivre		8. 50	9.	9. 25	10. 25				
		Verres		10.	10. 25	10. 75	12. 50				
		Etuis		1. 50	1. 50	1. 75	1. 75				
	" 12 verres	Cuivre									
		Verres									
		Etuis									
19 Janvier 1887.	1398	Cuivre									
		Verres									
		Etuis									
	34	Cuivre									
		Verres									
		Etuis									
	185	Cuivre		10. 25	10. 50	11. 50	13. 25				
		Nacre		11.	12. 25	13. 25	16. 50				
		Verres		2.	2. 25	2. 75	3. 50				
		Etuis		1. 50	1. 50	1. 75	1. 75				
	182	Cuivre									
		Verres									
		Nacre									
		Etuis									
142 Avril 1887	34	Cuivre									
		Verres									
		Etuis									
	187	Cuivre									
		Nacre									
		Verres									
		Etuis									
13 Mai 1887	Maince suipe seausers ils alum coul bl be centrees.	Alumi-mum.									
		Verres									
		Etuis									
23 Juin 1887	1398	Cuivre									
		Verres									
		Etuis									

EXHIBIT B produced and identified by Baille-Lemaire, and endorsed by him and by and by the commissioner on the day of examination.—Baille-Lemaire.—J. L. Rathbone, consul-general & commissioner.

28 Direct examination by Mr. SHUMAN:

Q. What is your name?

A. Frank F. Glaenzer.

Q. What is your business?

A. My business is to send goods over here to America; the commission business.

Q. Where is your place of business?

A. In Paris, France.

Q. What kind of goods do you ship to America?

A. We ship all kinds of goods; a great many optical goods, opera glasses, &c.

Q. You ship opera glasses, do you?

A. Opera glasses in a very great quantity.

Q. Are you acquainted with the manufacture of opera glasses in Paris?

A. I am very well acquainted with it; I know all those that are in Paris, I think, in the business.

Q. How long have you been engaged in this business, Mr. Glaenzer?

A. Seven years.

Q. You may look at the sample opera glasses shown you, and state if you know by whom it is made (handing to witness opera glass marked Exhibit A).

A. It is a glass made by Lemaire.

Q. Of what materials is that glass composed?

A. The body is of brass and of pearl, mother-of-pearl, white pearl—this one you see; and then the lenses are of glass.

Q. They are made then of three materials.

A. Three materials.

Q. Can you tell the value of the different materials in that glass?

A. I can tell them as near as it is possible for me to know, because I have seen them manufactured very often.

29 Q. What is the value of the glass?

A. Well, the glass is of the least value of the whole thing. For instance, the glass in this, which is a fifteen line, is worth 2 francs 75–100.

Q. Will you tell what is the value of the metal? Do you answer from your own knowledge of the business, or do you answer after refreshing your memory from anything?

A. I am obliged to refresh it a little bit, because I deal in so many goods and different things that I cannot hold them all in my memory.

(Counsel for defendant objected to the witness' testimony on the ground that he is not an expert.)

Q. What is that paper you have before you? (Refering to paper marked Exhibit N.)

A. That is the catalogue of Lemaire.

Q. Is that the price current of his manufacturing establishment.

A. Yes, sir.

Q. Of opera glasses?

A. Of opera glasses, yes, sir.

Q. Is that the principal price current?

A. That is the only one.

Q. That is the only price current he has?

A. The only one.

Q. What are the prices given in that catalogue as to his trade?

(Which que-tion was objected to by counsel for defendant.)

Q. What is that catalougue; is it the definitive terms of his business?

(Counsel for defendant objected to all evidence in reference to the catalogue as to its contents, etc.)

A. Yes, sir; with the discount on it for the trade.

Q. What is the date of that catalogue?

A. This catalogue is the 1882 catalogue.

30 Q. Is that an original catalogue or a copy of it?

A. That is the original one.

Q. Does that catalogue give the prices of the glasses, a sample of which you hold in your hand?

A. Yes, sir; it does.

Q. I will ask you to state, if you know, what is the value of the metal in the opera glass?

A. The value of the metal in this glass is 10 francs 50–100.

Q. You may state, if you know, the value of the shell or pearl?

A. The value of the pearl is 15 francs—12 francs.

Q. I will ask you to look at that invoice and state whether or not the sample of opera glass which you hold in your hand is indicated on that?

A. It is.

Q. Please state what it is on the invoice.

A. (Witness refers to invoice marked Exhibit M.) One opera glass, mother-of-pearl, No. 155, fifteen lines, at 25 francs 50–100.

Q. I will ask you if you can identify the glass which you hold in your hand, upon the invoice before you (opera glass marked Exhibit B).

A. Yes, sir; that is No. 244, fifteen lines, mother-of-pearl.

Q. I will ask you of what materials that opera glass is made?

A. That is made of brass, mother-of-pearl in two different shades, and of course the lenses of glass.

Q. Which is the material of chief value in that glass?

A. The mother-of-pearl.

Q. You may state what the different values are—first of metal, then of glass.

31 A. The metal here would cost 15 francs 50-100, because it is more heavily gilded, and there are some pearls all around here (indicating). The glass is always the same price, 2 francs 75–100.

Q. What is the value of the shell?

A. About 15 francs, mother-of-pearl.

Q. You may look at this sample (handing witness sample marked Exhibit C), and state whether you can identify that upon the invoice before you?

A. That is No. 185, 12 lines, mother-of-pearl.

Q. Is that also composed of three materials?

A. That is composed of three materials exactly the same as the others.

Q. You may state what the value of the different materials in that opera glass is?

A. The value of those different materials is—the value of the brass is thirteen francs. In this the glasses come in for eleven francs 75–100, and the pearl for 18 francs.

Q. I will ask you to state what the No. of that sample is upon the invoice (referring to sample marked Exhibit D)?

A. No. 183, 13 lines.

Q. Of what is that composed?

A. The material is brass, mother-of-pearl, and glass.

Q. What is the value of the glass?

A. 2 francs 25–100.

Q. What is the value of the metal?

A. The value of the metal is 11 francs.

Q. And the value of the shell?

A. Ten francs.

Q. Then in that case the shell is not the material of chief value, I take it?

A. No; here the tops are made out of—the value of the material of the top here, I can not give it to you quite exactly, because it varies
32 when it is gilded more or less heavily or varnished; the tops——

Q. What are the tops? Is it gutta percha, rubber, or is it shell?

A. They call that rubber; they put it in powder and press it.

Q. What is the value of the rubber?

A. 50 centimes, with the name on it.

Q. What is the number of that sample (handing to witness sample marked Exhibit E)?

A. No. 239, fifteen lines. This is composed entirely of brass, mother-of-pearl, and the lenses; it is also mother-of-pearl on top.

Q. By the lenses you mean the glass, do you?

A. I mean the glass; yes, sir.

Q. What is the value of the glass?

A. 2 francs 75-100.

Q. And of the metal?

A. The brass metal is 12 francs.

Q. And of the shell?

A. 15 francs.

Q. What is the number of the sample now shown you on the invoice (handing to witness sample marked Exhibit F)?

A. 185, 17 lines.

Q. Of what is that composed?

A. This is composed of brass, glass, and mother-of-pearl.

Q. What is the value of the brass?

A. The value of the glass here is 2 francs 75-100.

Q. The value of the metal?

A. The value of the metal is 12 francs.

Q. And the value of the mother-of-pearl?

A. 15 francs.

Q. What is the number of the sample now shown you on the invoice (handing to witness sample marked Exhibit G)?

A. 182, fifteen lines.

Q. Of what is it composed?

33 A. It is composed of brass, glasses, and mother-of-pearl.

Q. What is the value of the glass?
A. The value of the glass is 2 francs 75-100.
Q. And of the metal?
A. The value of the metal is 13 francs.
Q. What is the value of the mother-of-pearl in that?.
A. 15 francs.
Q. What is the number in the invoice of the sample now shown you (handing to witness sample marked Exhibit H)?
A. No. 181, thirteen lines.
Q. Of what is it composed?
A. It is composed of brass, glass, and mother-of-pearl.
Q. What is the value of the brass?
A. The value of the brass is 2 francs 25-100.
Q. The value of the metal?
A. 11 francs.
Q. And the value of the mother-of-pearl?
A. 12 francs.
Q. What is the number on the invoice of that sample now shown you (handing to witness sample marked Exhibit J)?
A. No. 161, fifteen lines.
Q. Of what is it composed?
A. Of brass, glass, and mother-of-pearl.
Q. What is the value of the glass?
A. 2 francs 75-100.
Q. What is the value of the metal?
A. 14 francs.
Q. What is the value of the mother-of-pearl?
A. 15 francs.
Q. Look at that invoice, dated September 14 (handing to witness paper marked Exhibit L), and state whether or not the sample now shown you is indicated on that invoice (handing to witness sample marked Exhibit K)?
A. It is indicated.
Q. What is the number?
A. No. 219, fifteen lines, opera glass, mother-of-pearl.
34 Q. Of what is that opera glass composed?
A. It is composed of brass (nickle plated), glass, and smoked mother-of-pearl.
Q. What is the value of the glass in it?
A. The value of the glass is 2 francs 75-100.
Q. And of the metal?
A. 13 francs 50-100.
Q. And of the mother-of-pearl?
A. 14 francs.
Q. Are all of the glass which correspond to the numbers given to these samples of the same materials and of the same relative value as those to which you have testified?
A. Exactly; take the one, No. 185, two glasses; 185 will be always the same thing.
Q. And soon on through the catalogue?
A. Through the whole catalogue.

Cross-examination by Mr. DAWES:

Q. Have you ever been engaged in the manufacture of opera glasses?

A. I have seen a great many manufacturing glasses.

Q. But you have never been personally engaged in the business of manufacturing?

A. No; I have not manufactured glasses, exactly.

Q. With what firm are you connected?

A. J. Glaenzer & Co., of Paris.

Q. Their business is a commission-business?

A. A commission business; yes.

Q. Personally, you don't know, do you, what the cost of manufacturing the different materials composing these opera glasses is?

A. I know what the approximate value is?

35 Q. But not definitely, I suppose?

A. Exactly; I could not say that I knew definitely.

Q. Have you made your estimates of the value of the materials composing these opera glasses from the catalogue of Lemaire Bros. in every instance?

A. Not in every instance; no. I can make an approximate value of them by what I know.

Q. Hav'n't you, in every instance, used the catalogue of Lemaire Bros. in forming your opinion of the value of the component materials?

A. I have used it so as to see the price of the opera glass which was placed in front of me; because I cannot tell how many numbers of opera glasses there are in the books, and I am obliged to see.

Q. You have consulted, then, the catalogue of Lemaire Bros. in order to determine the price of the particular opera glass about which you have been examined?

A. Yes, sir; because I cannot remember all the numbers of the price list.

(Counsel for defendant moved to strike out all the answers of the witness concerning the value and cost of the component materials of opera glasses concerning which he has been interrogated.)

Q. Can you tell me the cost of the brass entering into those opera glasses in its raw state; take any specific part of the glass there that you may see fit; take the glass marked Exhibit A?

A. Do you mean to take the material to make the glass with?

Q. Yes; when it is purchased by Lemaire in its raw state.

A. Well, I ought to know the weight of it.

Q. I ask you do you know the value in a raw state of the brass

36 entering into the manufacture of Exhibit A?

A. The value must be about 3 francs.

Q. How do you estimate that?

A. Well, it must be of a certain weight.

Q. Indicate the weight of the brass in there and the cost of the brass, and so forth, you don't know, do you?

A. I don't know; I could not tell the weight.

Q. Then you cannot tell definitely the value of the metal; I mean in its raw state?

A. I told you what I thought it was, because I think that the material that is necessary for it must be of that value.

Q. I ask you on what you base your estimate?

A. Upon the weight of the brass and the working of the gilding, and so forth.

Q. I mean the brass in its raw state, and it enters into the composition of those opera glasses; you don't know do you?

A. I told you what I know of it.

Q. Will you tell me, please, if you know the cost of manufacturing the raw brass in Exhibit A into the shape in which it now is?

A. The cost of it—you mean the real cost or the cost with the profit that the manufrcturer makes added to it, because he must make a profit; on those prices I have given to you there is a profit.

Q. I mean based on the manufacturer's prices of the opera glasses, that is, reckoning on his profit.

A. Well, he never sells the glass without it being finished, of course.

37 Q. Please understand me; I want to find out from you whether you know the cost of the raw material, and whether you know how much it costs to manufacture up that raw material into the condition in which it now is?

A. Yes, sir.

Q. And you don't know exactly the cost of the raw material. I want you to tell me now the cost of manufacturing the raw material into the shape in which it appears in Exhibit A—the brass?

A. Between 7 francs and 7 francs 50-100; between seven and eight francs; about 7 francs 50-100.

Q. How do you estimate that?

A. Because I have seen them working at it.

Q. Have you any means of ascertaining the definite cost of all the elements which enter into the manufacture of that brass into the condition in which it now is? You are not a manufacturer of these glasses are you?

A. I am not.

Q. You say it is worth so much when it is manufactured?

A. Yes, sir; I am obliged to remember what has been told me and what I have seen. I know I have seen them work so much and I have been through the factory many a time, and I have been told the prices of certain pieces that came into the opera glasses.

Q. How much does it cost to mold that brass into the shape in which it now is, without gilding?

A. It is molded; it is worked.

Q. I mean molding in the sense of shaping?

A. They make that—I don't know how many pieces in a day; there is a price for everything in it; I can't remember all that; only a

38 manufacturer could answer that question entirely; what I say is only approximate from what I can remember and what I have seen.

Q. Please give us the cost of that pearls in its raw shape, entering into the manufacture of that glass.

A. I don't think I can answer that.

Q. Please give us the cost of manufacturing the pearl from its raw shape into its present condition in that Exhibit A.

A. I can not answer that question either, because it is a different manufacturer that makes that.

Q. Then how do you say that the value of the pearl in that glass is 14 francs and the brass 10 francs; how do you get at those estimates?

A. Because I know of the value of the pearl.

Q. You say you don't know how much it costs in its original shape or how much it costs to manufacture it?

A. Yes, sir; but I know how much it costs to cover an opera glass of a certain line with pearl.

Q. That is you know the advanced price the manufacturer charges for it?

A. I know what all manufacturers charge, more or less. I know from one manufacturer it would be one price and from another it would be another.

Q. They vary, do they not?

A. Yes, sir.

Q. But your estimate in every instance is based upon the prices charged by different manufacturers for similar goods is it not?

A. I am obliged to confide in my memory from what I have learned from the manufacturers of the prices.

Q. Your memory is based upon what?

A. Upon what has been told me by the manufacturers.

39 Q. I ask you how you can tell its value when it is in its manufactured state when you don't know what it is worth in a raw state?

A. I remember what the manufacturer told me when I was at his place. I don't say what I say is the exact value of it, but as near as possible as I can remember it.

(Counsel for plaintiff offered in evidence the two invoices referred to by the witness, marked Exhibit L and Exhibit M.

Counsel for plaintiff also offered in evidence the catalogue of Lemaire, marked Exhibit N, which catalogue was objected to by counsel for defendants.)

The further examination of the witness was then adjourned to Saturday, October 18, 1884, at two o'clock p. m.

SATURDAY, *October 18th*, 1884.

Parties met pursuant to adjournment, when the witness was further cross-examined by Mr. Dawes, as follows:

Q. Please state, if you know, the value of the pearl used in its raw state in Exhibit A.

A. I said I would not answer that question yesterday.

Q. Well, I thought you did; you say you are unable to answer that accurately?

A. I said I didn't want to answer that question.

Q. Please state, if you know, the cost of manufacturing the raw pearl into its present condition as it appears in Exhibit "A."

A. I can only tell what the worth of the pearl is just as it is on the opera glass there, because the manufacturer who makes that opera glass buys the pearls and has it done outside of his factory by separate hands.

40 Q. So that you don't know the value of the elements which enter into the cost of manufacturing the pearl into its present condition?

A. I could not tell.

Q. Not definitely?

A. No; not definitely.

Q. How, then, do you state the value of the pearl as a component part of that opera glass?

A. Because I know that to take an opera glass fifteen lines, it needs—you need to spend as much money as, say, 12 francs, to cover that with pearl. That is what I know because the manufacturer has told me.

Q. What the manufacturer has told you? Then, in that form I object to that portion of the answer, what the manufacturer told him. Well, I will ask you again, to see if I understand you.

A. As I stated to you yesterday I am not a manufacturer myself of the goods, and what I can tell you is only the experience I have had in buying a great many of these goods.

Q. From the manufacturer?

A. From the manufacturer; and I have been very often, I may say have been constantly, in his works and seen how the goods are made, and having talked over the matter a great deal with him, and he explaining to me how he made the different things, and giving me the price of the different pieces.

Q. Don't you estimate the value of the pearl in this way—don't you substract from the value of a pearl opera glass, similar to Exhibit "A," as shown on Lemaire's price list, the value of the plain opera glass as shown in that price list, and ascertain the value of the pearl in that way?

41 A. No; I know the value of the pearl covering these opera glasses, and I know it because it has been told to me, especially for that glass. There are two glasses, the No. 155 and the No. 185, which are two glasses that are sold to a great quantity and are handled more than any others.

Q. Is there any difference in the value of the pearl in the exhibits mentioned, all of them?

A. Yes; there is a difference of value in the white pearl and in the smoked pearl.

Q. Is there any difference in the cost of manufacturing the pearl, the white pearl and the smoked pearl?

A. It is not in the manufacture of the pearl, but in the quality of the pearl. It is more difficult to find a colored pearl than a white one, and then the smoked pearl has got to be worked upon.

Q. Please state the difference of the original cost of the raw smoked pearl and the raw white pearl.

A. That I am unable to do. I can not answer that. I don't want to answer that.

Q. You say there is no difference in the cost of manufacturing, as I understand you, so far as you know? I mean it does not cost any more to work up smoked pearl than it does pearl?

A. No; not to work up.

Q. You don't know the difference in the original cost of the raw material?

A. Of the raw material I don't know the difference.

Q. Well, do the answers which you have made with reference to the component material of Exhibit "A" apply as well to all the exhibits to which you have testified in this deposition?

A. Yes; they do.

Q. You know nothing more in relation to the other exhibits mentioned in the deposition than you do in reference to Exhibit "A"?

42 I mean to say that they all stand on the same footing. You estimate the whole thing with reference to them all?

A. Yes; of course there is some heads that are different to this Exhibit A.

Q. My question refers simply to the value of the cost of manufacturing the material.

A. No; I don't know anything more than what I have testified. I want to say that the price of the mother-of-*the*-pearl is not always the same. There is a fluctuation in the market.

Q. What is that?

A. I want to add from what I know of the price of the pearl that it is not always the same. There is a fluctuation in the price. It goes up and down, if that can be of any interest to you.

Q. On what basis, then, do you estimate the value of the pearl—the value of the pearl at what time?

A. Well, it depends on the quantity there is on the market.

Q. Have you any means of knowing, except from the statements to you of the manufacturer, the value of the raw material and the cost of manufacturing the raw material into its present condition as it appears in the opera glass?

A. I cannot answer that question.

Q. (Former question read by the reporter.)

A. No exact means.

43 Redirect examination by Mr. SHUMAN:

Q. In arriving at the value of each of the component materials in these glasses have you attempted to take the price of the raw material as a basis?

A. No.

Q. Is it not true that the price or value of each of the materials composing these glasses, as stated by you, is the value in the manufactured condition?

A. Yes, sir.

Q. Taking the metal and lenses in Exhibit A as a basis, what would be the cost of finishing that glass, say, in moroc'o or leather?

A. It would cost—do you want to know the price of the leather covering?

Q. That is it; what the leather covering would be on the same metal?

A. About one franc, or twenty cents, it would cost.

Q. Twenty cents?

A. Yes, sir.

Q. So that when you say the pearl is worth so much you mean that the pearl constituent of that glass adds to the metal and the glasses so many francs?

A. That is what I mean; yes.

Recross-examination by Mr. DAWES:

Q. Is there any difference between the price list of Lemaire and the price list of other manufacturers in Paris of opera glasses similar to that of Exhibit A?

A. Yes, sir; there is a difference.

44 Q. Which is the highest; which charges the most for the opera glass?

A. I cannot say; I cannot answer it exactly, because none make exactly the same opera glass.

Q. Does any manufacturer make an opera glass containing similar pearl in its manufactured state?

A. Yes, sir.

Q. Who?

A. I can give three or four names.

Q. Well, give them.

A. La Combe and Jabreauz.

Q. What is the price of that opera glass as shown by Lemaire's price list, Exhibit A?

A. 25 francs (referring to price list); yes, 25 francs 50–100.

Q. What is La Combe's price for an opera glass similar to that?

A. I don't know exactly.

Q. What is his price for his opera glass containing the same pearl?

A. About 27 francs.

Q. And this is how much?

A. This is 25 50–100.

Q. What would be the value of the pearl in that opera glass if manufactured by La Combe?

A. The value would not be different from Lemaire.

Q. What would be the value of the metal frame if manufactured by La Combe?

A. The difference in value of La Combe and Lemaire glasses, for instance, is that Lemaire has better tools to manufacture his goods, and the difference in the price comes from the way it is manufactured, and not from the difference of value in the materials. Lemaire manufactures a little cheaper than La Combe.

Mr. SHUMAN. But the relative values are the same, are they not?

45 A. Yes, sir.

Mr. DAWES. If you were asked to estimate the value of the pearl in La Combe's glass of the same character as this would you estimate it upon his; that is, the cost of manufacturing to him or the cost of manufacturing to Lemaire?

A. I estimate it so because I know that La Combe has told me that he could not manufacture it at such a cheap price as Lemaire does.

Q. That he could not manufacture it as cheap?

A. Yes; that is what he told me.

46 To which said depositions and the admission thereof in evidence to the jury, and the reading thereof to the jury, the defendant by his counsel then and there excepted, upon the ground that the said depositions did not give in detail the values of the metal, shell, and glass, com-

ponent parts of the pearl opera glasses in question in this suit, in the condition in which the opera glass manufacturer received them. But the court overruled said objection and admitted the said depositions to be read to the jury; to which action of the court defendant by his counsel then and there excepted, and tendered this his first bill of exceptions, and prays that the same may be sealed, signed, and enrolled, and made a part of the record, and the same is done accordingly.

H. W. BLODGETT [SEAL],
Judge.

47 In the circuit court of the United States, northern district of Illinois.

FRANCIS C. HARDY
vs.
ANTHONY F. SEEBERGER. } No. 20930. Assumpsit.

Be it further remembered that upon the trial of this cause, after the transaction as set out in the defendant's first bill of exceptions, which is hereby referred to and made a part of this bill of exceptions, the court, amongst other things charged the jury that in determining which of the materials (manufacture of metal, manufacture of shell, or manufacture of glass) composing the opera glasses in question was the component material of chief value, they must ascertain what were their respective values at the time they were in such condition that nothing remained to be done upon them except putting them together to make the perfected glasses. To which said charge, or so much thereof as is herein set out, the defendant by his counsel then and there duly excepted, and prayed the court to charge the jury that in arriving at what was the component material of chief value in the said opera glasses, they should look and look only at the respective values of the metal, shell, and glass in the raw and unmanufactured state in which the opera glass manufacturer received them, and before their respective values had been enhanced by the manufacturer by means of any work or labor or time expended thereon; but the court refused so to charge the jury, to which action of the court the defendant by his counsel then and there duly excepted, and prays that this,
48 his second bill of exceptions may be sealed, signed, and enrolled, and made a part of the record, and the same is done accordingly.

H. W. BLODGETT [SEAL],
Judge.

(Endorsed:) Filed Feb'y 13, 1889. Wm. H. Bradley, clerk.

49 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the record of all the proceedings had in said court in the cause wherein Francis A. Hardy is plaintiff and Anthony F. Seeberger, collector for the port and district of Chicago, is defendant, as the same appears from the records and files of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in Chicago in said district, northern division, this twelfth day of October, 1889.

[SEAL.] WM. H. BRADLEY, *Clerk.*

50 UNITED STATES OF AMERICA,
Northern district of Illinois, ss:

The United States of America, to the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is before you in said circuit court between Francis A. Hardy, plaintiff, and Anthony F. Seeberger, collector for the port and district of Chicago, defendant, in an action of assumpsit a manifest error hath happened to the great damage of the said Anthony F. Seeberger, collector for the port and district of Chicago, defendant, as by his complaint appears, and it being fit that the error, if any there has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, A. D. 1890, in the Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Melville W. Fuller, chief justice of the Supreme Court of the United States this 29th day of November, in the year of our Lord one thousand eight hundred and eighty-nine and of the independence of the United States the 114th year.

[SEAL.] WM. H. BRADLEY,
Clerk of the circuit court of the United States for the northern district of Illinois.

(Indorsed:) Supreme Court of the United States. Anthony F. Seeberger, collector, &c., plaintiff in error, vs. Francis A. Hardy, defendant in error. Writ of error. Copy deposited for the defendant in error in the clerk's office, U. S. northern district of Illinois.

51 UNITED STATES OF AMERICA,
Northern district of Illinois, ss:

To Francis A. Hardy, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the second Monday of October, A. D. 1890, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein Francis A. Hardy is plaintiff, and Anthony F. Seeberger, collector for the port and district of Chicago, is defendant, to

show cause if any there be why the error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Henry W. Blodgett, judge, this fourth day of November, in the year of our Lord one thousand eight hundred and eighty-nine.

H. W. BLODGETT, *Judge.*

I accept service of the above citation.

JESSE A. BALDWIN,
Atty. for Francis A. Hardy.

Nov. 4, '89.

(Indorsed:) Supreme Court of the United States. vs.
. Citation. To October term A. D. 18 .

52 (Indorsement on cover:) No. 333. Anthony F. Seeberger, collector for the port and district of Chicago, plaintiff in error, vs. Francis A. Hardy. 14011. N. Illinois. C. C. U. S. Supreme Court U. S. Clerk's office. Received Mar. 15, 1890. Filed April 9, 1890.

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